PARLIAMENT OF VICTORIA

Summary Offences Amendment (Nazi Salute Prohibition) Bill 2023

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A Bill for an Act to amend the **Summary Offences Act 1966** to make the public display or performance of Nazi gestures an offence, to extend the application of the offence of public display of Nazi symbols and for other purposes.

The Parliament of Victoria enacts:

1 Purpose

The purpose of this Act is to amend the **Summary Offences Act 1966**—

(a) to make the public display or performance of Nazi gestures an offence; and

(b) to extend the application of the offence of public display of Nazi symbols.

2 Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

3 Principal Act

In this Act, the **Summary Offences Act 1966** is called the Principal Act.

4 Heading to Division 4C of Part I amended

In the heading to Division 4C of Part I of the Principal Act, for "**of Nazi symbols**" **substitute** "**or performance of Nazi symbols or gestures**".

5 Statement for this Division

(1) In section 41I of the Principal Act, for "Nazi party" **substitute** "Nazi Party".

(2) At the end of section 41I of the Principal Act **insert** the following—

"While the Hakenkreuz is perhaps the most recognised symbol of the Third Reich, gestures and other symbols associated with the regime, including the Nazi salute, also incite antisemitism and hatred. As with the Hakenkreuz, the Nazi salute and these other symbols and gestures used by the Nazi Party

have no place in Victoria and cause harm to many Victorian communities.".

6 Definitions

(1) In section 41J of the Principal Act **insert** the following definitions—

"***Nazi gesture*** means—

(a) a Nazi salute; or

(b) any other gesture used by the Nazi Party; or

(c) a gesture that so nearly resembles a gesture referred to in paragraph (a) or (b) that it is likely to be confused with or mistaken for that gesture;

Nazi Party means the National Socialist German Workers' Party (NSDAP) and includes, but is not limited to, the following paramilitary arms—

(a) the SA (Sturmabteilung);

(b) the SS (Schutzstaffel);

(c) the NSKK (National Socialist Motor Corps);

(d) the NSFK (National Socialist Flyers Corps);".

(2) In section 41J of the Principal Act, in the definition of ***Nazi symbol***—

(a) after paragraph (a) **insert**—

"(ab) any other symbol used by the Nazi Party; or";

(b) in paragraph (b), for "the symbol referred to in paragraph (a)" **substitute** "a symbol referred to in paragraph (a) or (ab)".

7 Section 41K amended

(1) In the heading to section 41K of the Principal Act, for "**of Nazi symbols**" **substitute** "**or performance of Nazi symbols or gestures**".

(2) In section 41K(1) of the Principal Act—

(a) after "Nazi symbol" **insert** "or Nazi gesture";

(b) in paragraph (a), for "is associated with Nazi ideology" **substitute** "or gesture is a Nazi symbol or Nazi gesture".

(3) For section 41K(2) of the Principal Act **substitute**—

"(1A) A person must not intentionally perform a Nazi gesture if—

(a) the person knows, or ought reasonably to know, that the gesture is a Nazi gesture; and

(b) the performance—

(i) occurs in a public place, a nonGovernment school or a postsecondary education institution; or

(ii) occurs in sight of a person who is in a public place, a

nonGovernment school or a postsecondary education institution.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(2) A person does not contravene subsection (1) or (1A) if the display or performance was engaged in reasonably and in good faith—

(a) for a genuine academic, artistic, educational or scientific purpose; or

Examples

1 A person performs the Nazi salute during a theatre performance.

2 A bookshop displays for sale an educational textbook on World War II, which has a Hakenkreuz on the cover.

3 A teacher shows a film as part of a history class in which the SS symbol can be seen.

(b) in making or publishing a fair and accurate report of any event or matter of public interest.

(2A) A person does not contravene subsection (1) if the display of the Nazi symbol was engaged in reasonably and in good faith for a genuine cultural or religious purpose.

Examples

1 A person of Hindu faith displays a swastika in the front window of the person's shop as a symbol of good luck.

2 A person of Jain faith draws a swastika on the person's new vehicle before using it as a symbol of good fortune.

3 A person of Buddhist faith displays a sculpture of Buddha with a swastika on the chest, as a symbol of auspiciousness, at a Buddhist temple.

4 The floor of a shop is patterned with swastikas in the hope of bringing prosperity.

5 A member of the Hindu community wears a Tshirt in public with a swastika on the front as a symbol of peace.

(2B) A person does not contravene subsection (1) if the display of the Nazi symbol or the Nazi gesture was engaged in reasonably and in good faith in opposition to fascism, Nazism, neo-Nazism or other related ideologies.

Examples

1 A person who displays a flag of Nazi Germany with a marking through it to signal the person's opposition to Nazism.

2 A person participating in a protest who displays a Nazi symbol on a placard which also contains words stating opposition to fascism.

3 A person who displays the pink triangle used by LGBTIQ+ communities.".

(4) In section 41K(3) of the Principal Act, after "Nazi symbol" **insert** "or Nazi gesture".

(5) In section 41K(4) of the Principal Act, for "if the display" **substitute** "or (1A) if the display or performance".

(6) In section 41K(5) of the Principal Act—

(a) for "if the display" **substitute** "or (1A) if the display or performance";

(b) after "offences" **insert** "or the giving of evidence in a proceeding in a court or tribunal".

(7) In section 41K(6) of the Principal Act, after "subsection (1)" **insert** "or (1A)".

8 Section 41L amended

(1) In the heading to section 41L of the Principal Act, after "**Nazi symbol**" **insert** "**or Nazi gesture**".

(2) For section 41L(1) and (2) of the Principal Act **substitute**—

"(1) A police officer may give a direction to a person to remove from display a Nazi symbol or Nazi gesture if the police officer reasonably believes the person is committing an offence against section 41K(1) by displaying the Nazi symbol or Nazi gesture.

(2) A police officer may give a direction to a person to remove from display a Nazi symbol or Nazi gesture if—

(a) the person is the owner or occupier of a property on which the Nazi symbol or Nazi gesture is being displayed; and

(b) the police officer reasonably believes an offence is being committed against section 41K(1) by the display of that Nazi symbol or Nazi gesture.".

(3) In section 41L(4)(a) of the Principal Act, after "Nazi symbol" **insert** "or Nazi gesture".

9 Issue of search warrant by magistrate

In section 41M of the Principal Act, for "section 41K" **substitute** "section 41K(1)".

10 New section 67 inserted

At the end of Part III of the Principal Act **insert**—

"**67 Transitional provision—Summary Offences Amendment (Nazi Salute Prohibition) Act 2023**

(1) Division 4C of Part I as amended by the **Summary Offences Amendment (Nazi Salute Prohibition) Act 2023** applies only to offences alleged to have been committed on or after the commencement of that Act.

(2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of the **Summary Offences Amendment (Nazi Salute Prohibition) Act 2023**, the offence is alleged to have been committed before that commencement.".

11 Repeal of this Act

This Act is **repealed** on the first anniversary of the day after the day on which it receives the Royal Assent.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Summary Offences Amendment (Nazi Salute Prohibition) Bill 2023

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.